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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 12, 2003

PETITION OF

VIRGINIA BANKERS ASSOCIATION

CASE NO. BFI-2002-00015

ORDER

On January 18, 2002, DuPont Community Credit Union (“DuPont”) filed an application (“Application”) with the Bureau of Financial Institutions (“BFI”) for an expanded field of membership. DuPont seeks to expand its field of membership to include persons who live, work, worship, or attend school in, and businesses and other legal entities located in, the counties of Augusta, Bath, Highland, Rockbridge, and Rockingham, and the independent cities of Buena Vista, Harrisonburg, Lexington, Staunton, and Waynesboro. DuPont supplemented the Application on April 19, 2002. The BFI approved the Application on May 16, 2002. On June 7, 2002, the Virginia Bankers Association (“VBA” or “Petitioner”) filed a petition (“Petition”) with the State Corporation Commission (“Commission”) in which the VBA contends that the BFI incorrectly approved the Application. Specifically, the VBA argues that the BFI failed to adhere to the requirements of § 6.1-225.23 B 3 of the Code of Virginia (“Code”) by approving the Application. The VBA asserts that the Virginia Credit Union Act, §§ 6.1-225.1 *et seq.* (Chapter 4.01 of Title 6.1) of the Code does not permit DuPont’s common bond to be based on the aforementioned five counties and five cities, and the VBA seeks a Commission order to that effect.

On October 25, 2002, the Commission entered an Order in which it, *inter alia*, directed all parties to this case to file briefs and specify whether a hearing is necessary by November 15, 2002. The Commission requested briefing on the following issues:

- (1) Whether the VBA has standing to bring the present complaint;

- (2) What information should be considered by the Commission in making its decision in this case; and
- (3) What weight should be given to the National Credit Union Administration's ("NCUA") definition of a "well-defined local community, neighborhood, or rural district" and any interpretations by the NCUA of that term.¹

DuPont, the BFI, the VBA, and the Virginia Credit Union League ("VCUL") filed briefs in this case.

DuPont contends that the VBA lacks standing to bring this complaint. DuPont further asserts that the Commission should consider, *inter alia*, §§ 6.1-225.23 B 3 and 6.1-225.3:1 of the Code.²

DuPont requests that the Commission also consider the entirety of the Application, the roles of the Central Shenandoah Planning District Commission ("CSPDC") and the Shenandoah Valley Partnership ("SVP"), the approval by the NCUA of credit unions encompassing multiple jurisdictions,³ the effect on state chartered credit unions if the Commission interprets § 6.1-225.23 B 3 of the Code differently from how the NCUA interprets its relevant rules, and the reasons DuPont wishes to expand its field of membership, including: (i) to serve its members where they work and where they reside within the community; (ii) to offer residents the choice of a competitive, member-owned financial cooperative; (iii) to expand its financial services; and (iv) to ensure its long term viability.

¹ The Commission also disposed of certain procedural motions in the October 25, 2002, Order.

² Section 6.1-225.23 B 3 of the Code provides that the Commission should consider as one possible credit union field of membership "[t]hose persons or organizations within a well-defined local community, neighborhood or rural district. The Commission shall in its discretion determine whether such a proposed field of membership constitutes a 'well-defined local community, neighborhood or rural district.' However, the Commission shall give consideration to the definition of the term that has been adopted by the National Credit Union Administration and become legally effective."

Section 6.1-225.3:1 of the Code provides, *inter alia*, that "[t]he Commission is authorized to adopt such regulations as may be necessary to permit state chartered credit unions to have powers comparable with those of federally chartered credit unions regardless of any then existing statute, regulation or court decision limiting or denying such powers to state chartered credit unions."

³ DuPont emphasizes the approval of Central Virginia Federal Credit Union ("CVFCU") by the NCUA in support of the Application. CVFCU's expanded field of membership includes four counties, two cities, and one town.

DuPont urges the Commission to generally consider facts and features that the NCUA focuses on when it reviews an application for an expanded field of membership and to give the NCUA's definition of a "well-defined local community, neighborhood or rural district" considerable weight.⁴ DuPont observes that the language of § 6.1-225.23 B 3 of the Code pertaining to the Commission's consideration of the NCUA's definition is mandatory and concludes that the Commission should therefore give credible weight to the NCUA's definition. DuPont concludes that the VBA's Petition should be dismissed, and the Commission should affirm the BFI's approval of the Application.⁵

The VBA argues that it has standing to bring its Petition based on the Commission's policy of encouraging participation by those affected by important cases and prior Commission precedent. The VBA specifically asserts that it represents the interests of commercial banks and savings institutions doing business in the Commonwealth of Virginia and that one of the VBA's core purposes is to protect the interests of commercial banks and savings institutions before state government. According to the VBA, members of the VBA have a very direct and very material interest in seeing to it that their tax advantaged competitors [credit unions] are required to live within the "common bond" requirement of the Virginia Credit Union Act, §§ 6.1-225.1 *et seq.* (Chapter 4.01 of Title 6.1) of the Code, and that the "common bond" requirement is enforced by the BFI. The VBA also refers to the Commission's website as indicating the Commission's willingness to "encourage broad participation in SCC cases to ensure that everyone's concerns are considered."⁶ The VBA also cites a previous decision in support of its assertion that it has standing to challenge the BFI's approval of the Application.⁷

⁴ DuPont Brief dated November 15, 2002, at 3, 12.

⁵ In the alternative, DuPont requests that the Commission handle the VBA's Petition in a separate generic proceeding without prejudicing DuPont's present Application. DuPont also asserts that the Commission should conduct no hearing in this case.

⁶ VBA Brief dated November 15, 2002, at 2-3. *See also*, <http://www.state.va.us/scc/commission/commissionandyou.htm>.

⁷ Petition of the Virginia Bankers Association, Case No. BFI-1997-00070, Order, 1998 S.C.C. Ann. Rep. 40 (April 3, 1998).

The VBA also contends that DuPont’s field of membership does not constitute a “well-defined local community, neighborhood or rural district” under the plain meaning of § 6.1-225.23 B 3 of the Code. The VBA asserts that, while the Commission is required to consider the NCUA’s definition of a “well-defined local community, neighborhood or rural district,” the Commission is not required to blindly follow the NCUA’s lead. The VBA further contends that given the significant size in terms of geography, population, and number of governmental jurisdictions involved, DuPont’s proposed community does not satisfy the plain meaning of § 6.1-225.23 B 3 of the Code. The VBA also argues that community credit unions in Virginia are subject to more restrictive common bond requirements than they were prior to 1999 because the General Assembly amended the Virginia Credit Union Act, §§ 6.1-225.1 *et seq.* (Chapter 4.01 of Title 6.1) of the Code that year and added the word “local” to further restrict the ability of credit unions to expand outside their local community.⁸

The VBA contends that the Application also fails to meet the NCUA’s definition of “well-defined local community, neighborhood or rural district.” The VBA claims that the residents of the ten jurisdictions⁹ do not interact or have common interests, citing the lack of shared governmental or civic facilities, the lack of a common trade area, the lack of a shared regional hospital, and the multiple newspapers and colleges that exist within the same proposed area. The existence of the CSPDC and the SVP does not provide evidence that the residents have “common interests” or “interact” under the community common bond requirements.

According to the VBA, the NCUA’s approvals of federal community common bonds should be given no weight by the Commission because § 6.1-225.23 B 3 of the Code references the NCUA’s definition of “well-defined local community, neighborhood or rural district,” not its approvals thereunder.¹⁰ The VBA emphasizes that the Commission need only consider the

⁸ Moreover, the VBA claims that the BFI has never approved such a large community common bond, even prior to the General Assembly’s 1999 amendment adding the word “local.”

⁹ The proposed expanded field of membership would also include eleven towns located in the five counties.

¹⁰ The VBA contends that the NCUA has ignored its own rules in approving certain federal credit union applications.

NCUA's definition and that the Commission should not abdicate to the NCUA the issue of what constitutes a permissible community common bond for Virginia credit unions.¹¹

Finally, the VBA asserts that DuPont's proposed expansion runs counter to § 6.1-225.23:1¹² because it reduces the demand for smaller credit unions. The VBA further alludes to the potential for safety and soundness concerns if the Commission approves the Application.¹³ The VBA concludes by requesting the entry of a Commission order finding that DuPont's proposed community is not a "well-defined local community, neighborhood, or rural district" under § 6.1-225.23 B 3 of the Code.¹⁴

The BFI asserts that its approval of the Application is fully supported by the facts and applicable law. The BFI maintains that the VBA does not have standing to bring this action as it has failed to demonstrate that the VBA, or one or more of its members, is suffering immediate or threatened injury as a result of the Commission's decision.¹⁵ The BFI argues that the NCUA's Interpretative Ruling and Policy Statement ("IRPS") 99-1, as well as the lack of any action by Congress to limit the IRPS, does not support the VBA's argument that the addition of the word "local" was intended to restrict the NCUA's approval of community credit unions. The BFI further claims that the General Assembly did not limit the Commission's discretion in amending § 6.1-225.23 B 3 of the Code but rather explicitly gave the Commission the authority to make the requisite determinations "in its discretion." According to the BFI, this broad grant of authority to the Commission when evaluating proposed fields of membership cannot be interpreted as intending to restrict the Commission's authority.

¹¹ VBA Brief dated November 15, 2002, at 13-14.

¹² Section 6.1-225.23:1 of the Code provides, *inter alia*, that "[w]hen practicable and consistent with reasonable safety-and-soundness standards, the Commission shall encourage the formation of a separately chartered credit union instead of adding a new group to the field of membership of an existing credit union."

¹³ The VBA argues that large credit unions with loosely defined fields of membership will compete with and potentially weaken smaller credit unions that have remained true to the original intent of the common bond. VBA Brief dated November 15, 2002, at 15.

¹⁴ The VBA agrees with DuPont that a hearing is unnecessary in this case.

¹⁵ BFI Brief dated November 15, 2002, at 3.

The BFI notes that IRPS 99-1 is sufficiently broad to allow for large community credit unions and that the NCUA has approved community credit unions with populations far greater than DuPont's Application.¹⁶ The BFI asserts that it is significant that the Application's proposed field of membership also constitutes a planning district represented by the CSPDC. The BFI also directs our attention to portions of the Application pertaining to shared medical facilities, newspapers, colleges and universities, interscholastic sport competitions, and community fairs and festivals as demonstrating the cohesiveness of the proposed field of membership. Finally, the BFI provides an alternative ground for approval of the Application by arguing that the proposed field of membership might also constitute a "well-defined rural district," pursuant to § 6.1-225.23 B 3 of the Code.¹⁷ The BFI requests that the VBA's Petition be dismissed.¹⁸

The VCUL urges the Commission to dismiss the VBA's Petition and affirm the BFI's approval of DuPont's Application. The VCUL first asserts that the VBA lacks standing to pursue its complaint. According to the VCUL, the VBA has made insufficient allegations of individualized harm to satisfy the standing requirements of 5 VAC 5-20-100 B.¹⁹ The VCUL claims that the VBA has shown no injury in fact, let alone an injury fairly traceable to the conduct of the BFI or DuPont.²⁰

The VCUL also maintains that the BFI appropriately exercised its administrative discretion in approving DuPont's Application. The VCUL claims that the facts show a common community of interest as evidenced by the political subdivisions that have organized the CSPDC

¹⁶ The BFI asserts that these approvals are entitled to deference under Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

¹⁷ BFI Brief dated November 15, 2002, at 12-14.

¹⁸ The BFI does not request a hearing in this case but asks leave to participate if another party requests a hearing.

¹⁹ 5 VAC 5-20-100 B of the Commission Rules of Practice and Procedure ("Rule 100 B") provides, *inter alia*, that "[p]ersons having a cause before the commission, whether by statute, rule, regulation, or otherwise, against a defendant, including the commission, a commission bureau, or a commission division, shall proceed by filing a written petition. . ."

²⁰ VCUL Brief dated November 15, 2002, at 8-9 (quoting Pye v. United States, 269 F.3d 459, 466-467 (4th Cir. 2001)).

and the SVP. The VCUL also asserts that, in the proposed expanded field of membership, there is a single trade area as well as shared governmental and civic facilities. Finally, the VCUL argues that the NCUA has approved five multiple community credit unions, three of which have a greater population than DuPont's proposed expanded field, since the amendment to the federal law.²¹ All parties agree that no hearing is necessary in this case.

NOW THE COMMISSION, upon consideration of the applicable law, including the NCUA's definition of the term "well-defined local community, neighborhood or rural district" as required by § 6.1-225.23 B 3 of the Code, as well as the pleadings and briefs and the arguments of the parties, including the VBA, contained therein, finds that the BFI's approval of DuPont's Application is fully supported by the facts and the applicable law.

Accordingly, IT IS ORDERED THAT:

- (1) The BFI's approval of DuPont's Application is Affirmed;
- (2) The Petition of the VBA is Dismissed; and
- (3) The case is placed in the file for ended causes.

²¹ The VCUL asserts that no hearing is necessary because there are no material facts in issue.